

MALIBU ROAD OFFER TO DEDICATE

Agenda Item 3.

August 8, 2002

COASTAL CONSERVANCY

Project Summary
August 8, 2002

MALIBU ROAD OFFER TO DEDICATE

File No. 99-120
Project Manager: Joan Cardellino

RECOMMENDED ACTION: Authorization to accept the Malibu Road Offer to Dedicate and to disburse up to \$375,000 to construct public access improvements on the site, authorization to apply for necessary permits and enter into agreements prior to construction; and adoption of the Mitigated Negative Declaration for the Malibu Road Beach Accessway project.

LOCATION: The Offer to Dedicate is a fee title lot dedication located between 24034 and 24056 Malibu Road. (Exhibit 1.)

PROGRAM CATEGORY: Public Access

ESTIMATED COST: Coastal Conservancy \$375,000

PROJECT SUMMARY: The Malibu Road Offer to Dedicate (OTD) is unique in several respects. The OTD is for fee title to a small lot, whereas most OTDs in Malibu and elsewhere are for a public access easement interest. In addition, unlike other vertical OTDs, which typically are only 10 to 25 feet wide, this dedication covers an entire 100-foot-wide parcel. Finally, the proposed accessway is located on Amarillo Beach. The closest public accessway is located about half a mile upcoast. Downcoast of the project site lies the exclusive Malibu Colony which stretches along one mile of beach with no public ~~accessways. As a result, the accessways. The~~ Conservancy has a unique opportunity to accept this fee title OTD, develop the property for public use, and thereby make available to the public ~~access to significant beach resources. a previously inaccessible beach.~~

A series of actions must be taken to enable the Conservancy to develop the site for public use. First, the Conservancy Board must authorize acceptance of the OTD, after which Public Works Board approval would be sought. Assuming the acceptance is approved and formalized, the Conservancy would need

to apply to the Coastal Commission for a coastal development permit in order to construct the beach stairway. In preparation for submitting the permit application, staff hired the necessary consultants to prepare a conceptual site plan and cost estimates. The site plan is attached to this staff recommendation as Exhibit 2. If the board approves the site plan and authorizes the expenditure of funds for construction, staff can complete the permit application. Once the Commission has issued the permit, Conservancy staff can then proceed to enter into an agreement with the Real Estate Services Division of the Department of General Services to build the site improvements. Concurrent with that effort, Conservancy staff would initiate discussion with interested local nonprofit entities to take ownership or to manage and maintain the property and improvements after they are constructed and the site is open to the public.

The parcel subject to this OTD is approximately 13,000 square feet. The property slopes steeply from elevation 35 feet, the elevation of Malibu Road, to sea level. The stairway would be constructed between Malibu Road and elevation 7 feet, which is the top of the sandy beach. At low tides, pedestrians could walk from this site down coast to Malibu Lagoon State Park, a distance of approximately one mile.

As can be seen from the conceptual site plan, the proposed improvements consist of a metal fence and gate designed for maximum transparency, a wheelchair accessible viewing platform, and a stairway built along the bluff face for stability and esthetics. Viewed from the beach, the stairway will appear to be part of the bluff.

Conservancy staff has worked closely with the nonprofit Malibu Foundation on the design and feasibility study of the Malibu Road OTD. It was originally anticipated that the Malibu Foundation would accept the OTD and design and construct the improvements. However, this phase of the project became too complex for the Foundation to manage. The approach preferred by Conservancy staff and the Foundation is for the Conservancy to accept the OTD and construct the improvements, and for the Malibu Foundation to develop programming at the site and perhaps manage the facility once it is built.

COASTAL CONSERVANCY

Staff Recommendation

August 8, 2002

MALIBU ROAD OFFER TO DEDICATE

File No. 99-120

Project Manager: Joan Cardellino

STAFF

RECOMMENDATION: Staff recommends that the State Coastal Conservancy adopt the following Resolution pursuant to Sections 31104.1 and 31400 *et seq.* of the Public Resources Code:

“The State Coastal Conservancy hereby:

- a. Authorizes the acceptance of the following Irrevocable Offer to Dedicate Fee Title:

The Adamson Companies Offer to Dedicate, recorded in the Official Records of Los Angeles County as Document Number 831447570, on December 8, 1983, and located between 24034 and 24056 Malibu Road, Malibu, as shown in Exhibit 1 to the accompanying staff recommendation.

Prior to recording a Certificate of Acceptance for the above-referenced Offer to Dedicate, the Executive Officer of the Conservancy shall review and approve the condition of title and shall determine that no other public agency or appropriate entity has accepted the Offer or equivalent interest in the property offered for dedication.

- b. Approves the conceptual site plan for the Malibu Road Beach Accessway as shown in Exhibit 2.
- c. Authorizes staff to apply for a coastal development permit.
- d. Authorizes staff to disburse up to three hundred seventy-five thousand dollars (\$375,000) to construct the public access improvements.
- e. Authorizes staff to enter into an agreement with the Department of General Services, Real Estate Services Division, to construct the improvements.

- f. Adopts the Mitigated Negative Declaration for the Malibu Road Beach Accessway project, attached as Exhibit 5 to the accompanying staff recommendation.
- g. Adopts the Malibu Road Beach Accessway Mitigation Monitoring Program, attached as Exhibit 6 to the accompanying staff recommendation.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed action is consistent with the authority and responsibilities of the Conservancy under Public Resources Code Section 31104.1 to serve as a repository for lands whose reservation is required to meet the policies and objectives of the Coastal Act.
2. The proposed action is consistent with the purposes and objectives of Sections 31400 *et seq.* of the Public Resources Code.
3. The proposed action is consistent with the Project Selection Criteria and Guidelines adopted by the Conservancy on January 24, 2001.
4. The proposed action is consistent with the Policy Regarding Acceptance of Irrevocable Offers to Dedicate adopted by the Conservancy on December 6, 2001.
5. The Conservancy has reviewed the proposed Mitigated Negative Declaration, attached to the accompanying staff recommendation as Exhibit 5, and finds that the project avoids, reduces or mitigates the possible significant environmental effect and that there is no substantial evidence that the Malibu Road Beach Accessway project, as mitigated, will have a significant effect on the environment, as defined in 14 California Code of Regulations Section 15382.
6. The Mitigated Negative Declaration represents the Conservancy's independent judgment and analysis.
7. There is no evidence before the Conservancy that the Malibu Road Beach Accessway project located in City of Malibu, County of Los Angeles, will have a potentially adverse effect, either individually or cumulatively, on wildlife resources as defined under California Fish and Game Code Section 711.2.

8. The Conservancy has on the basis of substantial evidence rebutted the presumption of adverse effect contained in 14 California Code of Regulations Section 753.5(d) regarding the potential for adverse effect on wildlife resources as defined under California Fish and Game Code Section 711.2."

STAFF DISCUSSION:

Project Description: As one of ten vertical public beach access OTDs within the City of Malibu that have not yet been accepted, the Malibu Road dedication is the only offer of fee title. Also unlike the other vertical OTDs, which are only 10 to 25 feet wide, this dedication covers an entire 100-foot-wide parcel. The Conservancy has a unique opportunity to accept this fee title OTD, develop it for public use, and thereby open a mile of beach to the public.

For the Conservancy to accept the OTD and develop the site for public use, a series of actions must be taken. First, the Conservancy Board must authorize acceptance of the OTD, and then the Public Works Board must approve the acceptance. Subsequently, the Conservancy would need to apply to the Coastal Commission for a coastal development permit in order to construct the beach stairway. In preparation for submitting the permit application, staff hired the necessary consultants to prepare a conceptual site plan and cost estimates. The site plan is attached to this staff recommendation as Exhibit 2. If the board approves the site plan and authorizes the expenditure of funds for construction, staff can complete the permit application. Once the Commission has issued the permit, Conservancy staff can then proceed to enter into an agreement with the Real Estate Services Division of the Department of General Services to build the site improvements. Concurrent with that effort, Conservancy staff would initiate negotiations with interested local nonprofit entities to take ownership or to manage and maintain the property and improvements after they are constructed and the site is open to the public.

Staff has been working directly with a local nonprofit organization, the Malibu Foundation for Environmental Education, and assisting the Foundation with its goal of developing this site for public access. The Foundation is interested in owning and managing the accessway for public use. Staff expects to return to the Conservancy Board for authorization to enter into such an agreement with the Foundation, once the facility has been built and management costs can be more accurately detailed.

The parcel subject to this OTD is approximately 13,000 square feet. The property slopes steeply from elevation 35 feet, the elevation of Malibu Road, to sea level. The stairway would be constructed between Malibu Road and elevation 7 feet, which is the top of the sandy beach. As can be seen from the conceptual site plan, the proposed improvements consist of a metal fence and gate designed for maximum transparency, a wheelchair accessible viewing platform, and a stairway built along the bluff face for stability and esthetics. Viewed from the beach, the stairway will appear to be part of the bluff.

At low tides, pedestrians could walk from this site down coast to Malibu Lagoon State Park, a distance of approximately one mile. Exhibit 3 indicates existing accessways along Malibu Road. It shows that this site would open up approximately one mile of beach stretching downcoast to Malibu Lagoon State Park. Upcoast approximately 1,850 feet, there is a 10-foot-wide public beach stairway. This stairway, as well as four additional stairways along the 2.6-mile-long Malibu Road, are owned and operated by Los Angeles County.

While Los Angeles County's Department of Beaches and Harbors maintains the existing beach stairways along Malibu Road, the County is not willing to take on any additional beach accessways at this time, preferring to concentrate its resources on larger, regional beaches. The California Department of Parks and Recreation is not willing to take on additional property interests that lie outside of state park unit boundaries, unless they are immediately adjacent and connect to an existing state park. This site is over a mile from Malibu Lagoon State Park. The Mountain Recreation and Conservation Authority has entered into an agreement with the Conservancy to operate and maintain three vertical accessways within Malibu, but this arrangement is limited for now to the Escondido Beach area, which is several miles from the Malibu Road site. The City of Malibu stated unequivocally to Conservancy staff at a meeting about the project in June 2001 that it does not believe public access should be provided at this site and that it has no interest in developing, maintaining or managing this accessway. The City believes the site should, instead, be developed for residential use.

Conservancy staff has worked closely with the nonprofit Malibu Foundation on development and opening of the Malibu Road OTD. The Foundation initiated the effort to develop the site and, under a Conservancy grant, undertook the design and feasibility study of the Malibu Road OTD. It was originally anticipated that the Malibu Foundation would accept the OTD

and design and construct the improvements. However, this phase of the project became too complex for the Foundation to manage and the Conservancy agreed to assist the Foundation by undertaking the construction. The approach preferred by Conservancy staff and the Foundation is for the Conservancy to accept the OTD and construct the improvements, and for the Malibu Foundation to develop programming at the site and, as appropriate, to take over ownership, management, and maintenance of the facility once it is built.

Project Financing: Coastal Conservancy
Construction: \$375,000

The source of funds for this project is expected to be the Violation Remediation Account and the Coastal Access Account. The Violation Remediation Account (VRA) consists of payments made as penalty for violations of individual coastal development permits required by the Coastal Commission. The Commission and the Conservancy have agreed in principle to use the funds in the areas where the violations occurred. All of the VRA funds proposed to be used for this project are derived from violations that occurred in Malibu. The Coastal Access Account is funded from coastal development permit application fees collected by the Coastal Commission. These funds are appropriated to the Conservancy annually for use in developing and managing OTDs and other coastal accessways.

Site Description: The project site is a vacant lot on the south side of Malibu Road in the City of Malibu. It is one of four vacant properties between single-family residences at 24056 and 24034 Malibu Road. The project site is within the Coastal Zone, and is bounded by Malibu Road on the north and Amarillo Beach on the south. Currently, the project site consists of a gravel and dirt parking area, a chain link and barbed-wire fence, and a 30-foot beach-facing slope partially covered in riprap used for slope stability. Approximately 0.25 mile northwest of the project site is Malibu Bluffs Park.

Project History: Conservancy involvement in efforts to provide public access to Malibu beaches goes back to 1979, when it gave a grant to the California Department of Parks and Recreation to open three beaches in western Malibu, the Robert H. Meyer Memorial State Beaches, also known as El Pescador, La Piedra, and El Matador State Beaches. The Conservancy has provided funding for several other beach accessways in Malibu, and has accepted six OTDs in Malibu since 1982.

In 1996, the Malibu Foundation for Environmental Education approached the Conservancy about developing this OTD for public access. In 2002, the Conservancy authorized a grant of \$69,000 to the Foundation for pre-project feasibility analyses of construction and management of the public access improvements on the site. The Foundation hired a team consisting of a landscape architect, surveyor, civil engineer, and geotechnical specialist to conduct the necessary design and engineering studies for the site. Given the complexity of the development project and to ensure that the construction phase proceeds in a timely manner, the Malibu Foundation has suggested that the Conservancy accept the OTD and build the improvements.

PROJECT SUPPORT: This project is supported by several individuals and local and statewide environmental organizations and individuals, including ??. (See organizations. See letters of support in Exhibit 45) [Coastwalk, Malibu Foundation, teachers...]4.

CONSISTENCY WITH
CONSERVANCY'S
ENABLING LEGISLATION:

Public Resources Code Section 31104.1 directs the Conservancy to serve as repository for lands whose reservation is required to meet the objectives and policies of the Coastal Act of 1976 (Public Resources Code Sections 30000 *et seq.*) Pursuant to this authority, the Conservancy may accept dedication of fee title, easements, development rights or other interests in lands, including interests required to provide public access to recreation and resources areas in the coastal zone.

In its action on the permit referenced in the Adamson Company OTD, which is the subject of this recommendation, the California Coastal Commission determined that it could not approve development consistent with the policies and objectives of the Coastal Act, except on condition that public access be provided. Reservation of the dedicated fee title area is required to meet the policies and objectives of the Coastal Act, and it is appropriate under Section 31104.1 that the Conservancy serve as a repository for this property.

In the same vein, Public Resources Code Section 31402 provides that, in order to assure that an adequate system of public accessways is provided along the entire coastline, the Conservancy may acquire fee title or lesser interests in areas required for public access to significant coastline resources. This OTD on Malibu Road will open up one mile of beach that has here-

tofore been inaccessible to the public. Further, Section 31404 states that the Conservancy may accept title to an area required for public access when no other public agency is able or willing to do so. As discussed above, no other state or local public agency is willing to accept this OTD.

Public Resources Code Section 31400.3 states that the Conservancy may provide such assistance as is necessary to aid public agencies and nonprofit organizations in establishing a system of public coastal accessways. As mentioned above, the Conservancy has been working for several years with the nonprofit Malibu Foundation to achieve its purpose of developing beach access via the Malibu Road Beach Accessway. Construction of the beach access improvements will further this goal. Staff anticipates that the Conservancy will enter into an agreement with the Malibu Foundation or other entity for long-term ownership, maintenance, and management of the accessway, once the project has been constructed and is open to public use.

Finally, Section 31405 of the Public Resources Code states that the Conservancy may accept fees collected for purposes of providing public access to coastal resources, and that any such funds shall be expended by the Conservancy for the purpose of acquisition, development, and maintenance of public accessways to the coastline. The funds proposed to be used to construct this accessway come from the Violation Remediation Account and the Coastal Access Account, both of which are funded from fees and fines collected by the Coastal Commission.

CONSISTENCY WITH
CONSERVANCY'S
PROJECT SELECTION

CRITERIA & GUIDELINES: The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines adopted January 24, 2001, in the following respects:

Required Criteria

Promotion of the Conservancy's Statutory Programs and Purposes: As discussed above, this proposed project is consistent with the purposes of Division 21 of the Public Resources Code by accepting the dedication of property interests required to meet the objectives of the Coastal Act and developing the necessary improvements to make the site useable by the public.

Consistency with Purposes of the Funding Source: As discussed above, the source of funds for this project is expected to

be the Conservancy's Violation Remediation Account and Coastal Access Account, both of which are dedicated for use in developing and improving coastal accessways.

Support from the Public: Letters of support are included in Exhibit 4.

Location: The Malibu Road OTD is located within the coastal zone and will expand public coastal access.

Need: Malibu is arguably the most famous section of the California coast, and one of the most popular, yet it has long stretches of coastline with little or no public access. The Conservancy has the opportunity to develop this site now, and open over one mile of beach to the public.

Greater-than-local Interest: The Malibu coast attracts visitors from all parts of the region, state and nation. Additional coastal access along this popular stretch of coastline will, thus, serve a broad constituency.

CONSISTENCY WITH
CONSERVANCY POLICY

RE: ACCEPTANCE OF OTDS: On December 6, 2001, the Conservancy adopted a policy regarding the acceptance of irrevocable offers to dedicate. In general, the Conservancy's policy is to accept any irrevocable OTD after giving due consideration to the feasibility of public use of the dedicated accessway, as well as any opinions of Conservancy legal staff or the Attorney General that the OTD is fatally flawed or likely to be determined invalid. Here, there are no concerns regarding the legality or validity of the OTD. Moreover, analysis of the specific factors set out in the Conservancy's policy relating to feasibility of public access supports the recommendation that the Malibu Road OTD be accepted. For a full discussion of these factors, see Attachment A to this staff recommendation.

CONSISTENCY WITH
THE COASTAL ACT:

Acceptance of this dedication is required to meet the policies and objectives of the Coastal Act for vertical and lateral access to the California coast, as required by California Coastal Commission permits. Section 30210 of the Coastal Act states that "maximum access . . . shall be provided for all the people." This authorization would ensure public access to a portion of the coastline that has heretofore been limited to private use.

CONSISTENCY WITH
LOCAL COASTAL
PROGRAM POLICIES:

No Local Coastal Plan has yet been adopted and approved for the City of Malibu. However, pursuant to legislative mandate (Public Resources Code Section 30166.5), the Coastal Commission has prepared a draft local coastal plan for Malibu: "City of Malibu, Revised Draft Local Coastal Plan, Land Use Plan, June 2002" (Draft LCP). The Draft LCP has a number of general Land Use Plan Policies regarding public access. Policy 2.7 states: "Where there is an existing, but unaccepted . . . public access Offer to Dedicate . . . construction of necessary access improvements shall be permitted to be constructed, opened and operated for its intended public use." Policy 2.20 states: "New public beach facilities shall be limited to only those structures necessary to provide or enhance public recreation activities." The proposed project is consistent with both these policies in that the accessway would be developed on property offered in dedication, and provides the minimum structure necessary to provide public access and viewing opportunities. In addition, the Draft LCP also provides "Specific Vertical Accessway Standards" under Policy 2.89. The specific standards applicable to Amarillo Beach require the location of new accessways every 1,000 feet along Malibu Road and expressly require the opening of "the existing vertical access OTD" (*i.e.*, the OTD which is the subject of this staff recommendation).

COMPLIANCE

WITH CEQA:

The California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 *et seq.*) requires consideration of potential environmental effects of agency actions and approvals, unless exempt. Accordingly, Conservancy staff prepared, through the environmental consulting firm of Jones & Stokes, an Initial Study/Proposed Mitigated Negative Declaration (Negative Declaration), attached as Exhibit 5, to evaluate the potential environmental consequences associated with the construction of a public accessway on the subject property and the subsequent opening of that accessway to public use.

The proposed Negative Declaration was noticed and circulated for public review on [July 1, 2002](#). The 30-day comment period will end on ~~_____~~, [2002, July 30, 2002](#), after the deadline for publication of this staff recommendation. Consequently, all comments received and responses, if appropriate, will be mailed to the Conservancy members and interested par-

ties under separate cover and will also be available at the Conservancy's public meeting.

The proposed Negative Declaration identified possible significant effects of the project in the areas of cultural resources, geology and soils, hydrology and water quality and noise. Proposed mitigation that will avoid, reduce, or minimize the possible effect to a level of insignificance is as follows:

Cultural Resources. Although no prehistoric or historical archaeological sites were identified within the project area, there is the possibility that significant cultural resources could be unearthed during project construction. To mitigate the potential for disturbance of significant cultural resources, if such cultural resources are found, work will stop until a qualified archaeologist can assess the significance of the find, and, if necessary, develop appropriate treatment measures. If human remains of Native American origin are discovered, state laws relating to the disposition of Native American burials will be adhered to.

Geology and Soils. The site is located in an area that has experienced recent landslide activity, and it is likely that minor and major landslides will continue to occur. Construction of the stairway, if not performed carefully, could result in immediate or delayed slope failure. Recommended mitigation measures include retaining a geological engineer to determine appropriate measures to prevent slope failures from being caused by the construction of the accessway; not irrigating the site; using permeable materials for landings and directing surface drainage towards the downslope of the stairways and landings; and having a geological engineer monitor construction to ensure the bluff is not destabilized.

Hydrology and Water Quality. In order to mitigate effects of construction on the erosion of soils, the contractor will be required to utilize best management practices throughout construction, such as the use silt screens or sandbags, as required under a Storm Water Pollution Prevention Plan.

Noise. Construction noise and ground vibration and their effects on soil stability shall be mitigated by drilling pile holes instead of driving piles, unless the latter is approved by a geologic engineer.

All mitigation measures proposed by the Negative Declaration are contained in the Mitigation Monitoring Program for the Malibu Beach Accessway project (Exhibit 6).

Conservancy staff recommends that the Conservancy: (1) find that the project, as mitigated, avoids, reduces, or mitigates the possible effects of the Malibu Beach Accessway project to a level of insignificance; (2) find that there is no substantial evidence that the project, as mitigated, may have a significant effect on the environment; (3) find that the proposed Negative Declaration reflects the Conservancy's independent judgment and analysis; (4) find that there is, on the basis of substantial evidence, no evidence before the Conservancy that the project will have a potential adverse effect on wildlife resources as defined under California Fish and Game Code Section 711.2 and 14 Cal. Code of Regulations Section 753.5(d); and (5) adopt the Mitigation Monitoring Program pursuant to 14 Cal. Code of Regulations Section 15074(d).

All supporting documents and the proposed Negative Declaration are available at the Conservancy's office for review. Upon approval, staff will file a Notice of Determination for the project.

Attachment A

According to the Conservancy's policy regarding the acceptance of OTDs, all of the following issues regarding feasibility of use need to be considered:

- Does the OTD have the potential to provide access to a beach, shoreline, view area or other recreational use, or to provide a connection to other easements or public properties providing such access (including the Coastal Trail)?

Yes. The dedicated lot itself is approximately 100 feet wide, and it will provide access to a small (approximately 500 feet long) beach at high tides, and to a one-mile stretch of beach at lower tides.

- Can the accessway itself be reached by the public?

When constructed, the stairs will be accessible from Malibu Road, which is a public road.

- What type of physical improvement, or physical improvements, must be provided in order to open it to public use?

A stairway and viewing platforms, along with a fence, gate and signage are proposed to open this accessway for public use.

- Can any preconditions on the opening of the access way to public use, as required by the offering document, feasibly be satisfied?

The offer to dedicate does not expressly impose any preconditions to accepting or opening the easement.

- Could the accessway be opened without unreasonably exposing members of the public to hazardous or unsafe conditions, if properly improved, managed, and posted?

Yes. People already trespass to enter this site and surf or kayak off the beach.

- Does the access way permit lateral access along a sandy beach, segments of the coastal trail or other trails?

Yes, this accessway will provide access along approximately one mile of sandy beach, which is a significant contribution to the coastal trail in Malibu.

EXHIBIT 4

Letters of Support

Letters will be mailed separately and/or hand-carried to the meeting.

EXHIBIT 5

Mitigated Negative Declaration

Distributed to Board Members only

EXHIBIT 6

Mitigation Monitoring Plan

MALIBU ROAD OFFER TO DEDICATE

Agenda Item 3.

August 8, 2002

EXHIBIT 5

Mitigated Negative Declaration